UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,395	02/07/2001	Patrick Nunally	PATRIOT.003A	5499

20995 7590 12/18/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
CONNOLLY, MARK A	
ART UNIT	PAPER NUMBER
2115	

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/779,395	NUNALLY, PATRICK	
	Examiner	Art Unit	
	Mark Connolly	2185	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2,3 &4*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claim 1-17 and 24-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants Admitted Prior Art [AAPA] in view of Nishiyama et al [Nishiyama] US Pat No 5790877.

3. Referring to claim 1, the AAPA teaches devices which execute programs through the use of a microprocessor [page 1 lines 11-30].

The AAPA though does not teach:

a. embedding operating speed instructions in a program to be used by a microprocessor

b. executing the program by the microprocessor

c. reading the embedded instructions

d. adjusting the operating speed of the microprocessor from a first speed to a second speed in accordance with the instructions such that sufficient processing power is provided to achieve a predetermined level of performance in executing the program

In summary, the AAPA does not teach inserting instructions into a program in order to adjust the speed of the processor from a first speed to a second speed. Nishiyama explicitly teaches a means of inserting instructions into a program whereby the instructions control the

clock frequency at which the device is operating [Abstract, col. 1 lines 59-65, col. 4 line 60 – col. 5 line 1, col. 5 lines 54-65 and fig. 8]. Adjusting the clock frequency is interpreted as adjusting a speed of a microprocessor. In addition, Nishiyama teaches that the insertion of clock control commands is used to reduce power consumption as much as possible [col. 5 line 66 – col. 6 line 2] which is interpreted as a predetermined level of performance. It would have been obvious to one of ordinary skill to modify the battery driven devices taught in the AAPA to include the instruction inserting means to control the microprocessor speed because it would provide a means to reduce power consumption as taught by Nishiyama.

4. Referring to claim 2-4, the AAPA teaches that the devices can download programs over the internet [page 1 lines 11-16]. The internet is interpreted as a network and programs downloaded from the internet, because they are downloaded from a remote site, are interpreted as being downloaded from a remote repository.

5. Referring to claims 5, 6 and 8, the AAPA teaches that the devices read and execute programs written in Java (interpreted as a Java applet) which is read by a Java Virtual Machine (JVM). In addition it is well known in the art that an applet can contain a multimedia application. Furthermore, because the operating speed instructions are embedded into the program which is read by a JVM, it is interpreted that the embedded instructions would also be read by the JVM.

6. Referring to claim 7, Nishiyama teaches that the instructions are read by instruction decoder (102) [col. 3 lines 50-55 and fig. 1].

7. Referring to claim 9, Nishiyama teaches returning the operating speed of the processor back to the original speed after the program is done [col. 2 lines 5-10].

8. Referring to claim 13, it is obvious that the program could be stored on a memory card.

9. Referring to claims 14-16, Nishiyama teaches that the instructions alter a clock speed in order to optimally execute a program [Abstract, col. 1 lines 59-65, col. 2 lines 38-42]. Optimally executing a program is interpreted as executing it with minimal power consumption.

10. Referring to claim 17, it is obvious in the AAPA-Nishiyama system a number of instructions per second to be processed could be specified since that it would require adjusting the speed of the processor.

11. Referring to claims 24-26, these are rejected on the same basis as set forth hereinabove.

12. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the AAPA and Nishiyama as applied to claims 1-16 above, and further in view of Dean et al [Dean] US Pat No 6477654.

13. Referring to claim 18, the AAPA-Nishiyama system, as established above, teaches the invention substantially including:

a. embedding operating speed instructions in a Java applet to be used by a microprocessor

b. executing the applet by a JVM coupled to the microprocessor

c. reading the instructions embedded in the applet

d. adjusting the speed of the microprocessor in accordance with the instructions such that sufficient processing power is provided to achieve a predetermined level of performance in executing the applet

The AAPA-Nishiyama system did not teach instructions adjusting the speed from a low-speed, low-power setting to a high-speed, high-power setting. Rather the AAPA-Nishiyama

system taught instructions for adjusting from a higher-speed higher-power setting to a low-speed, low-power setting in order to conserve power. Dean explicitly teaches that in order to conserve power, a device can be kept in a low power state until it receives a program to execute wherein then instructions are inserted into the program in order to maximize the performance and speed of the system during execution [fig. 4 and col. 2 lines 5-15, col. 5 lines 6-24]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the teachings of Dean into the AAPA-Nishiyama system because it would still provide a means to reduce power consumption of the system but would also provide maximum performance during program execution.

11. Referring to claims 19-23, these are rejected on the same basis as set forth hereinabove.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Connolly whose telephone number is (703) 305-7849. The examiner can normally be reached on M-F 8AM-5PM (except every first Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C Lee can be reached on (703) 305-9717. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Mark Connolly
Examiner
Art Unit 2185

mc
December 12, 2003

THOMAS LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100